

BUCKET FILE
ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC MAIL SECTION

JUN 17 2 15 PM '93

MM Docket No. 93-158

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Hazlehurst, Utica and
Vicksburg, Mississippi)

RM-8239

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: May 25, 1993;

Released: June 16, 1993

Comment Date: August 9, 1993

Reply Comment Date: August 24, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by St. Pe' Broadcasting ("petitioner"), requesting the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi. Petitioner also requests modification of its license for Station WJXN(FM) to specify operation on the higher class channel. Petitioner further requests the substitution of Channel 225A for Channel 265C3 at Hazlehurst, Mississippi, and substitution of Channel 267A for Channel 266A at Vicksburg, Mississippi, to accommodate the upgrade at Utica. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Utica with a wide coverage area FM service. Petitioner notes that Channel 265C3 can be allotted to Utica, Mississippi, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 267A is substituted for Channel 266A at Vicksburg, Mississippi, and Channel 225A is substituted for Channel 265C3 at Hazlehurst.¹ Channel 266A at Vicksburg is presently licensed to Station WBBV-FM. The proposed substitution at Vicksburg can be accomplished in compliance with the minimum distance separation requirements at the current site for Station WBBV-FM.² Station WMDC-FM, Hazlehurst, operates on Channel 265A. Channel 225A can be substituted for Channel 265A at Hazlehurst, Mississippi, in compliance with the Commission's spacing requirements at the current site for Station WMDC-FM.³ Although Station WMDC-FM requested and was granted authority to operate on Channel 265C3, effective June 15, 1990, the

station has never filed a Form 301 for Channel 265C3. See *Report and Order* (MM Docket No. 89-411), 5 FCC Rcd 2817 (1990). On March 16, 1993, the Commission sent a letter to Copiah County Broadcasting Company, the licensee of Station WMDC-FM, advising it that unless an FCC Form 301 application for a construction permit for Class C3 facilities is filed within 30 days of the date of the letter, it would be made a party to the rulemaking proceeding and the allotment could be downgraded. Further, the licensee was notified that extensions of the 30 day period, during which the construction permit application must be filed, would not be granted. Copiah County Broadcasting Company did not file a Form 301 to upgrade Station WMDC-FM to Class C3 facilities. Therefore, Copiah County Broadcasting Company is deemed to have abandoned its interest in the Class C3 allotment. Upon termination of this proceeding, we shall modify the license of Station WMDC-FM to specify operation on Channel 265A or 225A depending on the action taken in this docket.

3. We shall propose to modify the license for Station WJXN(FM), Channel 225A, as requested by the petitioner, to specify operation on Channel 265C3. However, in accordance with Section 1.420(g) of the Commission's Rules, should another party indicate an interest in the C3 allotment at Utica, the modification cannot be implemented unless an equivalent class channel is also allotted.

4. Whenever an existing licensee or permittee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it will reimburse the affected station for costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station WMDC-FM, Hazlehurst, and Station WBBV-FM, Vicksburg, for the reasonable costs in changing frequencies.

5. We believe the public interest would be served by proposing the substitution of Channel 265C3 for Channel 225A at Utica, Mississippi, since it would provide the community with its first wide coverage area FM service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below:

City	Channel No.	
	Present	Proposed
Hazlehurst, Mississippi	265C3	225A
Utica, Mississippi	225A	265C3
Vicksburg, Mississippi	254C1, 266A, 294C	254C1, 267A, 294C

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Bishop Broadcasting, Inc., the licensee of Station WBBV-FM, Vicksburg, Mississippi, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 267A in lieu of Channel 266A.

7. IT IS ORDERED, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, Copiah County Broadcasting Company, licensee of Station WMDC-

¹ The coordinates for Channel 265C3 at Utica are 32-06-09 and 90-29-56.

² The coordinates for Channel 267A at Vicksburg are 32-21-34

and 90-50-08.

³ The coordinates for Channel 225A at Hazlehurst are 31-53-34 and 90-24-08.

FM, Hazlehurst, Mississippi, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 225A in lieu of Channel 265C3.

8. Pursuant to Section 1.87 of the Commission's Rules, Bishop Broadcasting, Inc., and Copiah County Broadcasting Company, may not later than **August 9, 1993**, file a written statement showing with particularity why their respective authorizations should not be modified as proposed in the *Order to Show Cause*. The Commission may call upon Bishop Broadcasting, Inc. and/or Copiah County Broadcasting Company to furnish additional information. If Bishop Broadcasting, Inc. and/or Copiah County Broadcasting Company raise a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Bishop Broadcasting, Inc. and/or Copiah County Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

9. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

Copiah County Broadcasting Company	Bishop Broadcasting, Inc.
Station WMDC-FM	Station WBBV-FM
902 Highway 51 North	Rte 1, Box 159A
Hazlehurst, Mississippi 39083	Vicksburg, Mississippi 39180

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before **August 9, 1993**, and reply comments on or before **August 24, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Timothy K. Brady
P.O. Box 986
Brentwood, Tennessee 37027-0986

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.